

<sup>1</sup> See K.S.A. 1999 Supp. 44-510e(a).

Claimant appeals and contends he proved that as the result of his work-related low back injury he suffered a 100 percent wage loss and a 70 percent work task loss entitling him to an 85 percent work disability award. Furthermore, claimant argues that his testimony established that the medical treatment he received at the Via Christi Regional Medical Center on August 11, 2000, was authorized medical treatment.

In contrast, respondent contends the more persuasive and credible evidence contained in the record proves that claimant's low back injury resulted in a 23 percent wage loss and a 21 percent work task loss resulting in a 22 percent work disability. Respondent also argues claimant failed to prove that the medical treatment he received at the Via Christi Regional Medical Center on August 11, 2000, was authorized medical treatment.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the arguments contained in the parties' briefs, the Board makes the following findings and conclusions:

The Board finds the ALJ's award entitling claimant to a 38.5 percent permanent partial general disability based on the average of a 23 percent wage loss and a 54 percent work task loss should be affirmed. In particular, the Board agrees with the ALJ's conclusion, that although claimant has a limited understanding of the English language, the fact that he only applied for seven jobs in a nine month period after he was released to return to work does not constitute a good faith effort to find appropriate employment.<sup>2</sup> As mandated in Copeland, the ALJ imputed a post-injury weekly wage of \$245.00 to claimant based on vocational expert Karen Terrill's and Jerry Hardin's respective opinions that claimant retained the ability to earn \$240 to \$250 per week.

In regard to work task loss, the Board agrees with the ALJ's conclusion that Dr. Mills' 21 percent task loss opinion based on Karen Terrill's work task analysis and Dr. Murati's 87 percent work task loss opinion based on Jerry Hardin's work task analysis should be given equal weight resulting in a 54 percent task loss.<sup>3</sup>

The Board questions the reasoning of Dr. Mills for not restricting claimant from performing work activities requiring repetitive bending and twisting. The Board also questions Dr. Murati's restrictions as being too limiting. The Board concludes, as did the

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<sup>2</sup> See Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

<sup>3</sup> Dr. Murati testified that his work task loss opinion based on Jerry Hardin's work task loss analysis was 70 percent. But Mr. Hardin had not adjusted his work task list for duplicate work tasks. The ALJ made this adjustment in finding that Dr. Murati's work task loss opinion was 87 percent instead of the 70 percent Dr. Murati testified to. The Board agrees with this work task adjustment for duplicative work tasks as long as the work tasks that are duplicative are apparent from the description of each work task.

ALJ, that claimant's appropriate task loss lies somewhere between Dr. Mills' 21 percent opinion and Dr. Murati's 87 percent opinion.

The ALJ did not make a finding in the Award as to claimant's permanent whole body functional impairment as a result of his low back injury. The Board concludes that Dr. Mill's 10 percent opinion and Dr. Murati's 20 percent opinion should be given equal weight resulting in a 15 percent whole body permanent functional impairment rating. Both physicians based their permanent whole body functional impairment ratings as required in accordance with the American Medical Association, Guides to the Evaluation of Permanent Impairment, Fourth Edition (AMA Guides).<sup>4</sup> But these physicians, as do other physicians, had different opinions as to how to apply and interpret the AMA Guides in assessing permanent functional impairment. Neither of these physicians were requested to nor otherwise expressed an opinion challenging the other physician's application and use of the AMA Guides.

The Board does find that claimant established through his testimony that his treating physician, orthopedic surgeon Dr. Ely Bartal, authorized the medical treatment claimant received on August 11, 2000, at the Via Christi Regional Medical Center.<sup>5</sup> Claimant's testimony was uncontradicted and respondent failed to show that the testimony was untrustworthy. Uncontradicted evidence not unreasonable or improbable and not shown untrustworthy is regarded as conclusive.<sup>6</sup>

The Board further agrees with the findings of fact and conclusions of law set forth in the Award. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Board adopts those findings and conclusions as its own that are not inconsistent with this order.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that ALJ Nelsonna Potts Barnes' January 17, 2002, Award entitling claimant to a 38.5 percent permanent partial general disability is affirmed. But the Award is modified to the extent that respondent is ordered to pay the outstanding medical bill from Via Christi Regional Medical Center in the amount of \$492.20 as an authorized medical expense.

All other orders set out in the Award are adopted by the Board to the extent they are not inconsistent with the above.

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<sup>4</sup> See K.S.A. 1999 Supp. 44-510e(a).

<sup>5</sup> Regular hearing transcript, August 20, 2001, p.15

<sup>6</sup> Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, Syl. ¶ 5, 573 P.2 1036 (1978).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant  
Vincent A. Burnett, Attorney for Respondent  
Nelsonna Potts Barnes, Administrative Law Judge  
Director, Division of Workers Compensation